In the

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 985

ROBERT F. BRUCE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

In its opposition, the respondent has not challenged the importance of the question of whether an indigent has the same right as one with means for his chosen counsel to represent him. Nor has respondent disputed that there is wide disparity in the decisions of the several Courts of Appeals that have dealt with this question.

(a) Respondent's opposition relies solely on the assertion that petitioner did not have a firm commitment from his chosen counsel, and that he had been dilatory in informing the court of his desire to be represented by an attorney other than the one appointed for him. This assertion rests on the strained argument that when Mr. Gould, the Miami attorney whom petitioner had asked to represent him, wrote

that he would either arrange for a local attorney to represent petitioner or represent petitioner himself, Mr. Gould meant *any* local attorney. However, it seems clear that Mr. Gould, as an attorney, knew that petitioner could have assigned counsel to defend him in a felony case. It is equally clear that Mr. Gould meant that he would personally select a local attorney for petitioner or himself represent petitioner.

As one charged in a highly unpopular case, namely, a charge arising from a Nazi demonstration, it was essential to petitioner that he have carefully selected counsel. Mr. Gould or an attorney selected by Mr. Gould suited that need.

(b) Even more to the point is the trial court's failure to make any inquiry regarding the reasonableness of petitioner's request for a brief continuance to permit his chosen counsel to appear. This case came to trial faster than 80% of the criminal cases in the District Court during this period (Petitioner's Brief, p. 9, n. 10). Petitioner, in requesting a brief continuance to permit his chosen counsel to appear, was prohibited from addressing the court (Petitioner's Brief, Appendix B). In these circumstances, it was incumbent upon the court to make any inquiry necessary to ascertain the firmness of Mr. Gould's commitment or petitioner's diligence, while in prison, in locating an attorney of his choice.*

(c) Respondent also asserts that petitioner did not suffer "faulty representation" or "prejudice" at the hands of the defense counsel with whom petitioner was forced to trial. Yet respondent opposes petitioner's contention that he was prejudiced by the admission into evidence of Nazi

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*Cf. Lee v. United States, 98 U.S. App. D.C. 272, 235 F.2d 219 (1956) (decision by Judges Bazelon, Fahy, and Edgerton); Brown v. United States, 105 U.S. App. D.C. 77, 264 F.2d 363, at 369-70, cert. denied, 360 U.S. 911 (1959) (5-4, *en banc*) (Burger, J., concurring, stating that trial court must make inquiry; Bazelon, Fahy, Edgerton, and Washington, J.J., dissenting, stating that trial court must make inquiry).

slogans and a Nazi flag by emphasizing that defense counsel "stated affirmatively that he had no objection to the admission of the flag" (Opposition, p. 5). As petitioner pointed out, the judicial standards for challenging a conviction on the grounds of ineffective assistance of counsel are so strict as to be impractical (Petitioner's Brief, p. 8, n. 9). This factor makes the right of a defendant to choose his attorney all the more essential to the administration of justice.

CONCLUSION

For the reasons stated herein and in the petition, a writ of certiorari should be granted.

Respectfully submitted,

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